

Comptroller of the Currency, Treasury

§ 159.12

small farms, or businesses that are local in character;

(2) Investments for the preservation or revitalization of either urban or rural communities;

(3) Investments designed to meet the community development needs of, and primarily benefit, low- and moderate-income communities; or

(4) Other community, inner city, or community development-related investments approved by the OTS or the OCC.

(b) In addition to the amounts you may invest under paragraph (a) of this section, and to the extent that you have authority under other provisions of section 5(c) of the HOLA and part 160 of this chapter, and available capacity within any applicable investment limits, you may make loans to any non-consolidated subsidiary, subject to the lending limits in part 32 of this chapter.

(c) For purposes of this section, the term “obligations” includes all loans and other debt instruments (except accounts payable incurred in the ordinary course of business and paid within 60 days) and all guarantees or take-out commitments of such loans or debt instruments.

[76 FR 49025, Aug. 9, 2011, as amended at 78 FR 37946, June 25, 2013]

§ 159.10 How must separate corporate identities be maintained?

(a) Each Federal savings association and subordinate organization thereof must be operated in a manner that demonstrates to the public that each maintains a separate corporate existence. Each must operate so that:

(1) Their respective business transactions, accounts, and records are not intermingled;

(2) Each observes the formalities of their separate corporate procedures;

(3) Each is adequately financed as a separate unit in light of normal obligations reasonably foreseeable in a business of its size and character;

(4) Each is held out to the public as a separate enterprise; and

(5) Unless the parent savings association has guaranteed a loan to the subordinate organization, all borrowings by the subordinate organization indicate that the parent is not liable.

(b) OCC regulations that apply both to Federal savings associations and subordinate organizations shall not be construed as requiring a savings association and its subordinate organizations to operate as a single entity.

§ 159.11 What notices are required to establish or acquire a new subsidiary or engage in new activities through an existing subsidiary?

When required by section 18(m) of the Federal Deposit Insurance Act, a Federal savings association (“you”) must file a notice (“Notice”) under part 116, subpart A of this chapter at least 30 days before establishing or acquiring a subsidiary or engaging in new activities in a subsidiary. The Notice should be filed with the appropriate OCC licensing office and must contain all of the information the Federal Deposit Insurance Corporation (FDIC) requires under 12 CFR 362.15. Providing the OCC with a copy of the notice you file with the FDIC will satisfy this requirement. If the OCC notifies you within 30 days that the Notice presents supervisory concerns, or raises significant issues of law or policy, you must apply for and receive the OCC’s prior written approval under the standard treatment processing procedures at part 116, subpart A and E of this chapter before establishing or acquiring the subsidiary or engaging in new activities in the subsidiary.

§ 159.12 How may a subsidiary of a Federal savings association issue securities?

(a) A subsidiary may issue, either directly or through a third party intermediary, any securities that its parent Federal savings association (“you”) may issue. The subsidiary must not state or imply that the securities it issues are covered by Federal deposit insurance. A subsidiary may not issue any security the payment, maturity, or redemption of which may be accelerated upon the condition that you are insolvent or have been placed into receivership.

(b) You must file a notice with the appropriate OCC licensing office in accordance with § 159.11 of this part at least 30 days before your first issuance of any securities through an existing

subsidiary or in conjunction with establishing or acquiring a new subsidiary. If the OCC notifies you within 30 days that the notice presents supervisory concerns or raises significant issues of law or policy, you must receive the OCC's prior written approval before issuing securities through your subsidiary.

(c) For as long as any securities are outstanding, you must maintain all records generated through each securities issuance in the ordinary course of business, including a copy of any prospectus, offering circular, or similar document concerning such issuance, and make such records available for examination by the OCC. Such records must include, but are not limited to:

(1) The amount of your assets or liabilities (including any guarantees you make with respect to the securities issuance) that have been transferred or made available to the subsidiary; the percentage that such amount represents of the current book value of your assets on an unconsolidated basis; and the current book value of all such assets of the subsidiary;

(2) The terms of any guarantee(s) issued by you or any third party;

(3) A description of the securities the subsidiary issued;

(4) The net proceeds from the issuance of securities (or the pro rata portion of the net proceeds from securities issued through a jointly owned subsidiary); the gross proceeds of the securities issuance; and the market value of assets collateralizing the securities issuance (any assets of the subsidiary, including any guarantees of its securities issuance you have made);

(5) The interest or dividend rates and yields, or the range thereof, and the frequency of payments on the subsidiary's securities;

(6) The minimum denomination of the subsidiary's securities; and

(7) Where the subsidiary marketed or intends to market the securities.

§ 159.13 How may a Federal savings association exercise its salvage power in connection with its service corporation or lower-tier entities?

(a) In accordance with this section, a Federal savings association ("you") may exercise your salvage power to

make a contribution or a loan (including a guarantee of a loan made by any other person) to your service corporation or lower-tier entity ("salvage investment") that exceeds the maximum amount otherwise permitted under law or regulation. You must notify the appropriate OCC licensing office at least 30 days before making such a salvage investment. This notice must demonstrate that:

(1) The salvage investment protects your interest in the service corporation or lower-tier entity;

(2) The salvage investment is consistent with safety and soundness; and

(3) You considered alternatives to the salvage investment and determined that such alternatives would not adequately satisfy paragraphs (a)(1) and (a)(2) of this section.

(b) If the OCC notifies you within 30 days that the Notice presents supervisory concerns, or raises significant issues of law or policy, you must apply for and receive the OCC's prior written approval under the standard treatment processing procedures at part 116, subparts A and E of this chapter before making a salvage investment.

(c) If your service corporation or lower-tier entity is a GAAP-consolidated subsidiary, your salvage investment under this section will be considered an investment in a subsidiary for purposes of 12 CFR part 3 or part 167, as applicable.

[76 FR 49025, Aug. 9, 2011, as amended at 79 FR 11313, Feb. 28, 2014]

PART 160—LENDING AND INVESTMENT

Sec.

160.1 General.

160.2 Applicability of law.

160.3 Definitions.

160.30 General lending and investment powers of Federal savings associations.

160.31 Election regarding categorization of loans or investments and related calculations.

160.32 Pass-through investments.

160.33 Late charges.

160.34 Prepayments.

160.35 Adjustments to home loans.

160.36 De minimis investments.

160.37 Real estate for office and related facilities.

160.40 Commercial paper and corporate debt securities.